

Harvis & Fett

GABRIEL P. HARVIS
BAREE N. FETT

January 23, 2018

BY ECF

Honorable Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Martinez v. City of New York, et al.*, 16 CV 79 (AMD) (CLP)

Your Honor:

I represent plaintiff in the above-referenced action. I write to respectfully request that the Court deem the attached proposed Second Amended Complaint filed. If it should please the Court, the governing statute of limitations expires today.

As the Court may recall, a hearing was held earlier this month regarding certain belated disclosures by defendants and their failure to comply with discovery orders issued by the Court. While the information available to plaintiff remains incomplete, counsel has reviewed the available record in good faith and prepared the attached proposed amendment, so as to minimize any prejudice that may flow from the expiration of the limitations period today.

There is no indication in the record that the Court set a Rule 16 amendment deadline in this case. However, plaintiff respectfully submits that she has good cause for the proposed amendment under the circumstances here. *See AEP Energy Services Gas Holding Co. v. Bank of America, N.A.*, 626 F.3d 699, 726 (2d Cir. 2010) ("The rule in this Circuit has been to allow a party to amend its pleadings in the absence of a showing by the nonmovant of prejudice or bad faith.") (quoting *Block v. First Blood Assocs.*, 988 F.2d 344, 350 (2d Cir. 1993) (internal quotation marks omitted)); *accord, e.g., Johnson v. Bryco Arms*, 304 F. Supp. 2d 383, 398 (E.D.N.Y. 2004) (Weinstein, J.) ("In exercising discretion to grant leave to amend, courts should be guided by the underlying purpose of allowing amendment to facilitate a decision on the merits.") (quotation and citations omitted).

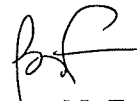
Hon. Cheryl L. Pollak
Jan. 23, 2018

If it should please the Court, given the incomplete record here, additional amendment may be appropriate in the future and plaintiff will promptly seek leave should the need arise.

Plaintiff provided defendants with a copy of the proposed amended pleading shortly before submitting the instant application, along with a request for their position. As of this writing, defendants have not responded.

Accordingly, plaintiff respectfully requests that the Court deem the attached proposed amendment filed. Thank you for your consideration of this request.

Respectfully submitted,



Baree N. Fett

Encl.

cc: ACC Kevin Thadani, Esq.

*Motion to file amended
pleading is granted
in light of the
impending expiration
of the Statute of
limitations, without
prejudice to defendants'
right to move to
dismiss at a later
time.*

So Ordered

C /s/ Cheryl L. Pollak

U.S.M.J.

1/23/18